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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/507,058	09/09/2004	Salvatore Calabrese	3006051-0005-PCT-US	8460

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EXAMINER

BROWN, MICHAEL A

ART UNIT	PAPER NUMBER
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3764

DATE MAILED: 02/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/507,058

Applicant(s)

CALABRESE, SALVATORE

Examiner

Michael Brown

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 December 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 19 is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 7-11 and 15-16 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Calabrese '226.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-6, 12-14 and 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Calabrese '226 in view of Monfardini '027.

Calabrese discloses in figures 1-4 a cervical collar substantially as claimed. However, Calabrese doesn't disclose the support member being rectangular, substantially flat, having rounded corners, the support members being a plurality of support members or the method step of moving the wearer's head from side to side to strengthening the neck muscles or testing the lateral support to see if an additional support should be added to support the user's neck. Monfardini teaches in figures 1-3 a support member 20 that is rectangular, substantially flat, has rounded corner (fig. 2) and

a plurality of parallel supports (20, 21). It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the support member disclosed by Monfardini could be substituted for the support member disclosed by Calabrese because both supports are functionally equivalent and used in the same field of endeavor. The supports could be a plurality of supports in order to provide support around the user's neck. It is very old and well known in the art to turn a patient's neck from side to side to strengthen neck muscles. It doesn't involve an inventive step or novelty to test a lateral support to see if additional lateral supports are needed to support a user's neck. A large individual such as a professional wrestler or football player would require additional support versus a small woman or child wearing the cervical collar would require less support members.

Allowable Subject Matter

Claim 19 is allowed.

Response to Arguments

Applicant's arguments filed December 2, 2005 have been fully considered but they are not persuasive. Applicant argues that the Velcro disclosed by Calabrese '226 is not a rigid lateral support. The examiner concurs. However, the rigid lateral support disclosed by Calabrese is reference element 30. This support is located in the same place on the cervical collar that the support is located on the cervical collar in the present invention. As for the support being lateral, the examiner is interpreting lateral as meaning that the rigid support is disposed in the neck region below the mandible

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bone of the wearer. Clearly the prior art shows the lateral support being located in the same position on the user as the lateral support in the present invention. Applicant argues that Calabrese '262 fails to disclose a rigid lightweight support. However, the support disclosed by Calabrese '262 is rigid (col. 2, lines 23-25) and lightweight (plastic). Applicant argues that the rigid support disclosed by Calabrese isn't attached to the cervical collar by a rivet. However, the rivets (32, 34) attach the rigid support to the cervical collar. Applicant argues that the support disclosed by Calabrese isn't a plate, lacks rounded corners and lacks a color. However, the rigid element (30) disclosed by Calabrese is a plate. Monfardini was used as a modifier to provide a rigid support having rounded corners. The plate disclosed by Calabrese could be aluminum, which has a silver color. Applicant argues that none of the prior art discloses placing the lateral supports on the side of the cervical collar. However, Applicant hasn't claimed supports on the side of the collar. Applicant simply claimed that the support was a lateral support. Applicant argues that the prior art doesn't disclose the method steps of claim 18. However, the only step that may be absent from the prior art is moving the wear's head from one side to strengthen the wear's neck muscles against the resistance provided by the lateral support. One of ordinary skill in the art would acknowledge that moving the head from one side to another side strengthens the neck muscles. The collar being around the neck would automatically provide some resistance with or without the rigid support.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Brown whose telephone number is 571-272-4972. The examiner can normally be reached on 5:30 am-4:00 pm Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gergory Huson can be reached on 571-272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

M. Brown
February 15, 2005

A handwritten signature in black ink, appearing to read "Michael A. Brown", with a long horizontal flourish extending to the right.

MICHAEL A. BROWN
PRIMARY EXAMINER